

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8884 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHOBHNA DAMODAR ERANDE

Versus

STATE OF GUJARAT

Appearance:

MS SUMANKUMARI SINHA for Petitioner
Mr. K.C.Shah, ASSTT. GOVERNMENT PLEADER for
Respondent Nos. 1 to 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 24/11/1999

ORAL JUDGEMENT

This petition has been filed for a
direction to the respondents to issue "No due
certificate" and start paying provisional pension to the
petitioner so that the petitioner may get retiral
benefits.

2. One Smt. Pushpalata Yashwantrao Chinchore took loan of Rs.30,750/- for the purchase of ready-made house. The petitioner executed a surety bond for the obligation to the extent that the borrower shall duly and regularly pay or cause to be paid to the Government, the amount of the said loan with interest thereon by instalments at the rate and in the manner set out in the said agreement/mortgage. When the said loan of Rs.30,750/- and interest shall be duly paid, then this bond would be void otherwise the same shall remain in full force and valid, but so nevertheless that borrower shall die or become insolvent or at any time ceases to be in service of the Government or commit the breach of any condition or provisions contained in the said agreement/mortgage, whole or so much of the principal sum of the said loan with interest thereon as shall have been remained unpaid shall immediately become due and payable to the Government and recoverable from the surety together with all further interest at the same rate as arrears of land revenue in one instalment by virtue of this Bond. The obligation undertaken by the surety shall not be discharged or in any way affected by an extension of time or any other indulgence granted by the Government to the said Borrower and that for the purpose of its enforcement the liability undertaken by the Surety hereunder shall be construed as joint and several liability alongwith the liability of the Borrower under the said Agreement Mortgage.

Lateron the borrower died and the amount of loan could not be recovered. The petitioner being a Government servant, retired int he year 1990. The retiral benefits including gratuity and pension etc. have been withheld by the respondents and "No due certificate" has not been issued to the petitioner. Hence, the petitioner has filed the present petition.

3. The learned counsel for the petitioner submitted that gratuity and reitral benefits such as pension and gratuity cannot be attached by the Government under section 60(1)(G) of Civil Procedure Code, wherein it is mentioned that stipends and gratuities allowed to pensioners of the Government (or of a local authority or of any other employer) or payable out of any service family pension fund notified in the Official Gazette by (the Central Government or the State Government) in this behalf, and political pensions shall not be liable to attachment or sale.

4. I have carefully considered this contention of the learned counsel for the petitioner.

However, I do not find any substance in this contention inasmuch as the provisions of section 60 of Civil Procedure Code are applicable to the attachment and sale in execution of a decree. In the present case, there is no question of execution of any decree. Hence, this provision of section 60 of Civil Procedure Code is not applicable in the present case. Moreover, the loan amount was given by the Government and the amount of retiral benefits are also being paid by the Government and the Government is entitled for adjusting the amount which is due under any obligation. Under the terms of the surety bond, the petitioner is liable to pay the entire amount.

5. The learned counsel for the petitioner further argued that the amount of the loan can be recovered from the estate of the deceased borrower. Her mother and husband have consented to sell the property of the borrower and to adjust the amount of loan from the auction proceeds. The learned counsel for the petitioner also referred the letter dated 20th March, 1981 wherein the mother of the deceased borrower has given her consent to sell the property of her deceased daughter and her daughter's husband S.G.Bapat has also given his written consent and there is no difficulty in disposing of the property. The learned counsel for the petitioner also referred the letter dated 28th January, 1983 sent by the Under Secretary of the respondents to the petitioner, wherein it is stated that the house purchased from the loan amount may be disposed of by a public auction and sale proceeds be adjusted towards outstanding loan amount and for that purpose, the Collector, Baroda has been informed vide letter dated 25th June, 1982 and the petitioner was also directed to contact the Collector, Baroda for this purpose.

6. As the property of the deceased borrower is not claimed by any person it will be deemed to be a Government property. The Government can recover the amount of loan from that property by putting that property to auction sale and the amount of loan can be adjusted from the sale proceeds of the property of the deceased. Rule 4 of Gujarat Financial Rules, 1971 provides that the mortgage should be completed within three months from the date of acquisition of such house. In this case, the deceased borrower took the loan and the department was required to get the mortgage deed executed within three months as per rule 4-B. It is the fault on the part of Government in not getting the mortgage deed executed from the deceased borrower. Therefore, the surety cannot be held liable for the fault of the

Government. As such, the petitioner being a surety, cannot be held liable for the amount of loan which could not be recovered from the property of the deceased borrower as the mortgage deed could not be got executed from the deceased borrower by putting the property in auction sale. As such, the petitioner is not liable for the payment of loan advanced to the deceased borrower.

7. I have given anxious thought to the contentions of the learned advocate for the petitioner. But the contention of the petitioner is not tenable in the eye of law inasmuch as the mother and husband of the deceased are supposed to be the heirs of the deceased borrower. No doubt, they have given their consent for the auction sale of the property of the borrower. But it has not been declared by the court of law or by the Government itself that there is no heir of the deceased borrower in the eye of law and none of them has claimed that property by way of succession. Unless it is declared by the court of law or by the Government, the property cannot be sold in auction. There is no bar in the law for the recovery of the amount of loan from the surety. The surety is liable to pay that amount under the terms of the contract. As such, the Government has availed the recourse to recover the amount of loan from the pension of the petitioner. The action of the respondent Government does not appear to be unjustified for the recovery of the amount from the retiral benefits of the petitioner.

8. In the last, the learned advocate for the petitioner pointed out from the affidavit filed by the Manager, Government Printing and Stationery Department, Vadodara that the amount of Rs.78,789/- is due to the petitioner as on 17.11.99. But the Government has outstanding dues of Rs.31,108/- to be recovered from the petitioner and for that due amount, the Government is entitled to recover from the petitioner. As such, the petitioner is entitled to get the remaining amount of Rs.46,681/- and that can be paid to the petitioner in view of the order passed by this Court.

9. The learned counsel for the petitioner pointed out from the affidavit filed by Shri J.A.Shah, Manager, Government Printing and Stationery Department, Vadodara that pursuant to the order of this Court, an amount of Rs.78,789/- has been deposited by the respondents in this Court. The petitioner is entitled to Rs.46,681/- leaving the Government dues of Rs.32,108/-. In case, the loan amount is recovered from the sale proceeds of the property of the deceased borrower, the

petitioner is entitled to get her remaining amount of Rs.32,108/- in future.

10. In the facts and circumstances and the discussion made above, this petition is required to be allowed in part and is accordingly allowed in part. The Registrar of this Court is directed to pay an amount of Rs. 46,681/- to the petitioner by an account payee cheque and pay the remaining amount of Rs. 32,108/- to the Manager, Government Printing and Stationery Department, Vadodara. The petitioner is directed to issue a receipt in triplicate to the Registrar of this Court, out of which, two copies will be issued to the respondent no. 3 and one copy will be handed over to the respondent no.2. Rule is made absolute accordingly with no order as to costs. Interim relief, if any, stands vacated.

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